

HB 106 - UNIFORM INTERSTATE FAMILY SUPPORT ACT LEGISLATION SECTIONAL ANALYSIS

February 13, 2015

This bill updates Alaska's Uniform Interstate Family Support Act (UIFSA) to add important provisions for the enforcement and recovery of child support in international cases. In 2007, the United States signed the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague Convention). This Convention contains provisions that establish uniform procedures for the processing of international child support cases. In order for the United States to fully accede to the Convention, all 50 states must adopt these new international provisions in their UIFSA. All of these changes are in the 2008 version of UIFSA, as amended by the Uniform Law Commission. The bill also incorporates the 2001 uniform amendments that were designed to clarify and enhance the 1996 version, the version that is currently in effect in Alaska.

Section 1 amends AS 25.25.101 the definitions section to add or amend the following: "convention," "foreign country," "foreign support order," "foreign tribunal," "home state," "initiating tribunal," "issuing foreign country," "issuing state," "issuing tribunal," "obligee," "obligor," "outside the state," "person," "record," "register," "registering tribunal," "responding state," "state," and "support enforcement agency," and "tribunal."

Section 2 adds a new subsection (b) to AS 25.25.102 to clarify that the child support services agency under AS 25.27.010 is the support enforcement agency of the state.

Section 3 amends AS 25.25.103 to clarify that cumulative remedies do not affect remedies under other law of the recognition of a support order under the basis of comity.

Section 4 adds a new subsection to AS 25.25.103 to establish that this Act does not establish the exclusive method for establishing support in Alaska and that it does not grant Alaska the ability to issue an order related to custody or parenting time under this chapter.

Section 5 is a jurisdictional provision and is amended to provide that a tribunal of this state shall apply this act to a support proceeding involving a foreign support order, a foreign tribunal, or an obligee, obligor or child residing in a foreign country.

Section 6 amends AS 25.25.201, to add minor wording changes.

Section 7 adds a new subsection to AS 25.25.201 on jurisdiction that prevents the existing statute from being used to create personal jurisdiction to modify a child support order from another state or foreign country unless specific requirements are met.

Section 8 repeals and reenacts AS 25.25.202 on duration of personal jurisdiction to provide that Alaska has continuing, exclusive jurisdiction to modify or enforce its order if certain requirements are met.

Section 9 makes minor wording changes to AS 25.25.203 on this state an initiating and responding tribunal.

Section 10 amends AS 25.25.204 on simultaneous proceedings to include foreign countries.

Section 11 amends AS 25.25.205 to clarify that the determination for jurisdiction is at the time of filing and that the state can have continuing jurisdiction with the consent of all parties even when the parties no longer reside here.

Sections 12 clarifies AS 25.25.205(b) when Alaska has continuing, exclusive jurisdiction to modify its child support order and the party's ability to consent to continuing, exclusive jurisdiction.

Section 13 clarifies AS 25.25.205(c) when a tribunal of this state will recognize the continuing exclusive jurisdiction of another state if that other state has issued a child support order under a law substantially similar to the law in this state.

Section 14 address jurisdiction by amending AS 25.25.205 (d) to clarify if a tribunal does not have continuing jurisdiction it can forward a petition for child support to another court to modify an order.

Sections 15 and 16 amend AS 25.25.206 to clarify when a tribunal of this state can act as an initiating or responding tribunal to enforce a support order.

Section 17 through 21 amend AS 25.25.207 on procedures for a controlling order determination. It clarifies when the Alaska tribunal may determine which court order is the controlling order when multiple orders are issued by different jurisdictions. It clarifies the requirements for a controlling order. It adds the child support agency's obligation to file a certified copy of the controlling order.

Section 22 adds a new subsection to AS 25.25.207 to require a copy of every child support order in effect to be filed when requesting a controlling order determination as well as a record of payments. Notice must also be provided to a party whose rights may be affected.

Section 23 makes minor amendments to add "foreign country" to AS 25.25.208 on multiple support orders.

Section 24 amend AS 25.25.209 to add clarifying language on credits for payments.

Section 25 adds a new section to allow tribunals in Alaska to use evidence, discovery, and communication from outside jurisdictions when exercising jurisdiction over someone not in Alaska. It also adds a new section addressing jurisdiction for modifying a spousal support order.

Sections 26 and 27 make minor conforming amendments to general provisions on proceedings under this chapter.

Section 28 amends AS 25.25.304 to provide the process for the Alaska tribunal to initiate a request to another state or foreign country and convert support amount sought into the equivalent amount in the applicable foreign currency.

Section 29 amends AS 25.25.305 to provide when an Alaskan tribunal is the responding tribunal, it can establish a child support order, modify the order, determine which order is the controlling order, and determine the parentage of a child. Adds that an obligor can be ordered to provide their email address to the tribunal.

Section 30 adds a subsection to AS 25.25.305 to require, upon request, a tribunal to state the amounts due in the applicable foreign currency.

Sections 31 and 32 make minor conforming changes to sections on tribunals and duties of the child support services agency.

Section 33 adds new subsections to the AS 25.25.307, duties of the child support services agency, addressing the requirements for registering a support order including registering the controlling order and currency conversion. Adds new subsection on issuing support orders and income withholding orders if requested by another state.

Section 34 is a new section, AS 25.25.208, setting forth the duties of the Department of Revenue to order services and determine that a foreign country has established a reciprocal arrangement for child support.

Section 35 amends AS 25.25.310 for minor technical changes.

Section 36 amends AS 25.25.311 for minor technical changes.

Section 37 repeals and reenacts AS 25.25.312 on nondisclosure of information. It changes the provisions on how the court can seal and keep confidential from other parties or the public identifying information if it would jeopardize the health, safety or liberty of a party or a child. The court can order, after a hearing, the disclosure of some information if the court determines it is in the interest of justice.

Section 38 through 44 makes minor conforming and clarifying amendments to provisions on evidence and procedures.

Section 45 adds a new subsection as AS 25.25.316 to provide that a certified, true copy of a voluntary admission of paternity is admissible to establish parentage of a child.

Section 46 amends AS 25.25.317 to include electronic mail as a way for tribunals to communicate.

Sections 47 through 48 make minor conforming amendments.

Section 49 adds new subsections to AS 25.25.319 on receipt and distribution of payments when the state is providing services to the obligee, sending conforming income withholding orders to an obligor's employer for redirected payments, and providing a record of payments received.

Section 50 makes amendments to AS 25.25.401 addressing when the court can issue a support order, including requiring personal jurisdiction over the parties, and also makes conforming amendments.

Section 51 repeals and reenacts AS 25.25.401(b) on temporary child support orders and clarifies when the tribunal should issue a temporary support order.

Section 52 adds AS 25.25.402, proceedings to determine parentage, to allow a tribunal of this state to be the responding court in a proceeding to determine parentage if the action is brought under a similar statute, which allows Alaska to accept jurisdiction over a case that was filed in another jurisdiction but is forwarded to Alaska.

Sections 53 through 57 amend provisions in AS 25.25.501 and 502 on an employer's receipt of an income withholding order. The amendments provide what the employer can do if it receives two or more income-withholding orders. Also, the amendments provide conforming wording changes.

Section 58 amends AS 25.25.506 on contest by an obligor to clarify how a parent can challenge the enforcement of an income-withholding order issued in another state and received by an employer in this state.

Section 59 amends AS 25.25.507(a) to add that a support enforcement agency seeking to enforce a support order from another jurisdiction can send the documents to the enforcement agency in this state.

Sections 60 through 62 amend AS 25.25.601 and .602 add "a foreign support order" as a support order that can be registered and add conforming wording changes.

Section 63 adds new subsections to AS 25.25.602 on procedures to register orders for enforcement clarify requirements when registering an order.

Section 64 makes a conforming amendment to add "foreign country" to AS 25.25.603 on effect of registration for enforcement.

Section 65 amends AS 25.25.604 on choice of law and provides that the law of the issuing state or country determines how payments occur under a registered order, how arrears are calculated and interest on those arrears, and the satisfaction of the support obligation.

Section 66 adds new subsections to AS 25.25.604 to provide that a responding court in this state shall apply the procedures and remedies available in Alaska to collect and enforce a support order from another jurisdiction but that Alaska will prospectively apply the law of the state or foreign country that issued the controlling order.

Section 67 makes conforming changes in AS 25.25.605 and references the statute that provides the procedure and rules to contest the registration of a support order and provides how to register an order if there are two or more orders in effect.

Section 68 makes adds a new subsection to AS 25.25.605 to specify notice requirements if the registering party asserts two or more orders are in effect.

Sections 69 and 70 are conforming amendments to time and procedures to contest the validity of a support order.

Section 71 adds to AS 25.25.607, the reasons to contest validity of a support order, the ability for a party to state the alleged controlling order is not the controlling order.

Section 72 through 74 makes conforming technical changes.

Section 75 amends AS 25.25.611(c) the language related to modification of an order from another jurisdiction and clarifies that aspects of the order that could not be modified in the law of the issuing state may not be modified by Alaska.

Section 76 amends AS 25.25.611(d) to make conforming technical changes.

Section 77 amends AS 25.25.611 by adding a new subsection providing that the law of the state that issued the controlling order governs the duration of support. Also provides that the tribunals in Alaska retain jurisdiction when one party moves to another state and the other party resides outside the United States.

Section 78 amends AS 25.25.612 to require that when an Alaska order is modified by another state, Alaska shall only enforce the old order for the purposes of arrears and interest prior to modification and provide relief for violation of the order that occurred prior to modification, but upon registration then shall enforce the modified order from the other state.

Section 79 amends AS 25.25 to add new sections:

Jurisdiction to modify child support order of foreign country. Provides that when a foreign country no longer has or refuses to exercise jurisdiction over a child support modification, Alaska may act over individuals subject to the personal jurisdiction of the court without consent and even when persons are not residents of this state and the order that is issued will be controlling.

Procedure to register child support order of foreign country for modification. Provides that a party or child support enforcement agency can file a petition to modify a foreign

support order that is not under the Hague Convention at the same time as a request for registration or at another time.

Section 80 amends AS 25.25.71 to remove the procedures on parentage and creates definitions for sections 25.701 to 25.713 regarding initiating, registering, contesting, enforcing, and modifying support orders. Definitions include “application,” “central authority,” “convention support order,” “direct request,” “foreign central authority,” “foreign support agreement,” and “United States central authority.”

Section 81 amends AS 25.25 by adding new sections:

Applicability. Provides that sections 25.701 to 25.713 only apply to child support proceedings under the Hague Convention.

Relationship of child support services agency to United States central authority. Provides that the federal Department of Human Services has recognized the Alaska child support services agency as the agency that may act under the convention.

Initiation by child support services agency of support proceeding under the convention. Specifies that the Alaska child support services agency provides enforcement services in child support proceedings to establish, modify, and enforce child support in foreign and domestic proceedings.

Direct request. Provides that an individual may request to establish, modify, or enforce a child support order under the applicable laws of the state, but does not require the child support services agency to provide assistance to the petitioner who is filing the request. This section provides that the statutes applying to the convention do not prohibit the use of the simplified and expedited rules in Alaska law for recognition and enforcement of foreign support orders.

Registration of convention support order. Provides the necessary documents to register a foreign support order including: the order and verification of its enforceability in the country it came from, the total arrears, and the due process rights of the respondent. This section provides that the court does not have to register an order if it finds that it would be contrary to public policy and must promptly notify the parties if the order is not registered.

Contest of registered convention support order. References to statutes that apply to contested registration of a support order and provides the regulations for registering a support order under the Hague Convention, specifically the timelines for contesting registration and the basis for contesting the registration.

Recognition and enforcement of registered convention support order. Provides the circumstances under which Alaska may refuse to register a support order that is under the Hague Convention.

Partial enforcement. Provides that when one part of a foreign order can be enforced and one part cannot the court shall enforce the part that can be enforced.

Foreign support agreement. Provides the terms under which a foreign support agreement can be recognized and enforced in Alaska.

Modification of convention child support order. Provides that an Alaska tribunal cannot modify a child support order when the obligee is still a resident of the foreign country where the order was issued unless that obligee agrees that Alaska has jurisdiction, the foreign court refuses to exercise jurisdiction, or the order could not be registered because of a lack of jurisdiction, fraud, or lack of authenticity of the order in the foreign jurisdiction.

Personal information; limit on use. Personal information under these section is only to be used for the purposes for which it was gathered.

Record in original language; English translation. Provides that a record of the court proceedings from the foreign country must be in its original language and if not in English must come with an English translation.

Sections 82 through 84 makes conforming technical changes.

Section 85 clarifies that uniformity is promoted and encouraged.

Section 86 repeals AS 25.25.205(f), 25.25.206(c), 25.25.301(b), and 25.25.401(c). These sections address spousal support. A new section, 25.25.281 will address spousal support. See Section 25 of the bill.

Section 87 Applicability. Adds that the effective date applies to proceedings that are started on or after the effective date of this act to any action to determine parentage, or register, recognize, modify, or enforce an order or agreement.

Section 88 Transition provisions. Provides that the Department of Revenue may adopt regulations to implement changes by this act.

Section 89 Revisor's instruction. Directs the revisor to change the headings or catch lines for certain affected sections of the chapter.

Section 90 Effective date. Section 88 addressing, addressing regulations, is effective immediately.

Section 91 Effective Date. The Act is effective July 1, 2015.